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I oppose the proposed amendment to MCR 2.112(2)(b), which would require a challenge to an affidavit of merit to be made within 63 days of the date of the affidavit.

Unless there is a concomitant requirement that a complete curriculum vitae, containing an iterated list of important information concerning the affiant, accompany the affidavit, defendants would be at the mercy of initial discovery. Stalling tactics, subterfuges, truthful but misleading answers to interrogatories, etc. all threaten the ability to discover what may prove to be dispositive information concerning an affiant's qualifications vis a vis the statutory criteria.

Because any list of professional qualifications would be inapposite to some cases, or permit various subterfuges, the better way of dealing with this problem, in the interest of fairness, would be to direct the trial court, in a scheduling order, to fix an early deadline for discovery of the affiant's qualifications. This necessary change is only partially addressed by the proposed amendment to MCR 2.401(B)(2)(a)(vi).

Absolute deadlines, when it is entirely reasonable and possible to later discover key facts that warrant a challenge to an affiant's qualifications or a notice of intent, are simply an attempt to replace judicial discretion on a case-by-case basis with "zero tolerance" policies that inevitably work injustice in the name of uniformity and simplicity.

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